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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,390

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Fangjun Jiang

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BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238

EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

MAIL DATE

DELIVERY MODE

06/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,390	Applicant(s) JIANG ET AL.	
	Examiner Frank B. Vanaman	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-16, 23 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-16, 23 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Application

1. Applicant's request for reconsideration, filed March 19, 2008, has been entered in the application. Claims 1-4, 6-16, 23 and 25-27 are pending.

Claim Rejections - 35 USC § 112

2. Claims 1-4, 6-16, 23 and 25-27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each of claims 1, 11 and 23, the claim recitation and appears to present a contradictory scope, in that each claim now relates limitations recited in an alternative fashion to parallel limitations recited in a cumulative fashion. In claim 1 at lines 6-9 (and also at lines 14-16); claim 11, lines 6-9 (also note lines 14-17) and claim 23, lines 6-10 (also note lines 15-17), the recitations present a plurality of conditions in an alternative manner, whereas in claim 1 at lines 10-13, claim 11, lines 10-13 and claim 23, lines 11-14 the plurality of previously recited conditions are compared in what appears to be a cumulative manner rather than an alternative manner. As such, the claim recitation appears contradictory, and the claim scope is not clear.

Claims Not Rejected over the Prior Art

3. Claims 1-4, 6-16, 23 and 25-27 are not rejected as being anticipated by or unpatentable over the prior art, however they are not in condition for allowance at this time in view of the condition described in the claim rejections based on 35 USC §112, second paragraph section above.

Response to Comments

4. Applicant's amendment has been entered in the application, and the comments filed therewith have been carefully considered. As regards the propriety of finding a section 112 clarity issue where "none previously existed" applicant is very pointedly reminded that what previously existed as a plurality of separate claims (e.g., claims 1, 5 and 21) has now been condensed into single claim (e.g., new claim 1), with a similar comment being equally applicable to claims 11 and 23. The condition which now obtains is a result of applicant combining all the limitations of several claims into one, possibly without carefully actually analyzing the resulting claim. Presenting a broad

limitation in an independent claim, then further narrowing it in separate dependent claims is quite acceptable, as applicant should be well aware. Presenting a limitation which has a perceived difference in scope, or which is logically contradictory, in a single claim is most certainly not an equivalent arrangement however.

Perhaps a more detailed explanation is required to assist applicant's understanding.

Taking claim 1 as an example for analysis purposes: In claim 1 at lines 6-9 the recitation presents a plurality of conditions in an alternative manner. For the phrase "At least one" being interpreted to a breadth entirely appropriate of the claim as "one" in lines 6-7, it is possible to select one (and only one) vehicle controller condition at lines 8-9:

- (1) vehicle speed,
 - (2) maximum vehicle speed since start, and
 - (3) engine runtime,
- as being the recited controller condition.

First confusing condition: If the one chosen condition is current vehicle speed, then the comparing step recited at lines 10-16, which does not refer to a current vehicle speed in its calculations, but does still explicitly refer to the use of a vehicle controller condition carries no meaning, and it would not be clear how this comparing step relates to the claim, since the "one" chosen condition of the group enumerated previously is not recited in the comparing step, which still explicitly recites a controller condition. This is simply not clear.

Second confusing condition: If the one chosen condition is maximum vehicle speed, then the comparing step recited at lines 10-16, which refers to both maximum vehicle speed and engine runtime, would be confusing in that while the one chosen condition is recited in the comparing step the other is not. So, then, does this then mean that the recitation of lines 10-16 explicitly requires both engine runtime and maximum vehicle speed to be the chosen condition? If so, then the recitation at lines 6-7 which allows for "at least one" is confusing in that the later recitation contradicts the condition of "at least one" being appropriately interpreted as being "one".

There are, of course, a number of other conditions of interpretation which would be similarly confusing. The examiner has not presented all examples for reasons of

brevity. As such, the claim recitation appears contradictory, and the claim scope is not clear, and the examiner expresses some surprise that it has been necessary to explain this to applicant.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618

/Frank B Vanaman/
Primary Examiner, Art Unit 3618